

STATE OF MICHIGAN
COURT OF APPEALS

ROBERT COLVIN, MICHAEL DRANE,
PAULETTE MITCHELL, DIMITRIS
PAPARAPTIS and FRANKIE WYRICK,

UNPUBLISHED
June 30, 2011

Plaintiffs-Appellants,

and

STEVEN STOLMAN,

Plaintiff,

v

DETROIT ENTERTAINMENT, L.L.C., d/b/a
MOTOR CITY CASINO,

Defendant-Appellee,

and

ROBERT EDWARDS, ARNOLD WILLIAMS,
LEON GRIFFIN and GLORIA BROWN,

Defendants.

No. 296753
Wayne Circuit Court
LC No. 08-100732-NZ

Before: BORRELLO, P.J., and JANSEN and SAAD, JJ.

PER CURIAM.

In this tort action arising out of incidents at a casino owned by defendant Detroit Entertainment, L.L.C., d/b/a Motor City Casino (Motor City), plaintiffs Robert Colvin, Michael Drane, Paulette Mitchell, Dimitris Paparaptis, and Frankie Wyrick (plaintiffs) appeal as of right from the trial court's order granting summary disposition in favor of Motor City. For the reasons set forth in this opinion, we affirm.

I. BACKGROUND

Plaintiffs' claims arose out of incidents that occurred approximately ten years ago. The incidents sometimes involved Motor City security personnel allegedly arresting casino patrons for alleged misdemeanors and lesser offenses. Some of the detained patrons alleged that they were arrested and detained by unlicensed security personnel for conduct not amounting to crimes. Other patrons alleged that they were wrongfully arrested and barred from Motor City for engaging in a practice known as "slot walking," which involves taking tokens, chips or credits left behind by other players in gaming machines. *Stiglmaier v Detroit Entertainment, LLC*, unpublished opinion per curiam of the Court of Appeals, issued August 31, 2004 (Docket Nos. 246465 and 246466), slip op p 2.

Several lawsuits arose out of the incidents. Some of these actions sought class certification, which was ultimately denied. On January 9, 2008, plaintiffs commenced this action. On February 7, 2008, plaintiffs filed a first amended complaint, which contained negligence, assault, false arrest and false imprisonment claims. Motor City asserted the statute of limitations as an affirmative defense and claimed that plaintiffs' lawsuit was time-barred.

Motor City moved for summary disposition pursuant to MCR 2.116(C)(6) ("Another action has been initiated between the same parties involving the same claim"), MCR 2.116(C)(7) (claim barred by statute of limitations)¹, and MCR 2.116(C)(10) (no genuine issue of material fact), arguing, in relevant part, that plaintiffs' claims were barred because plaintiffs' complaint was filed beyond the applicable statutes of limitations, and the statutes of limitations were not tolled. Plaintiffs argued that their claims were not time barred because the statute of limitations was tolled by the filing of class action complaints in cases brought by other casino patrons, or slot walkers, in which plaintiffs were putative class members.

The trial court granted Motor City's motion for summary disposition, ruling that plaintiffs' claims were untimely, because the tolling provided by MCR 3.501(F)(1) expired or ceased under MCR 3.501(F)(2)(c). Plaintiffs appeal as of right.

II. ANALYSIS

Plaintiffs argue that the trial court erred in ruling that their complaint was barred by the statute of limitations, since, plaintiffs argue, there was tolling under MCR 3.501(F).

We review de novo a trial court's summary disposition ruling. *Willett v Waterford Charter Twp*, 271 Mich App 38, 45; 718 NW2d 386 (2006). Interpretation and application of a court rule are questions of law, which are also reviewed de novo. *Kloian v Domino's Pizza, LLC*, 273 Mich App 449, 458; 733 NW2d 766 (2006). Absent disputed questions of fact, whether a claim is barred by a statute of limitations is also a question of law, which we review de novo on appeal. *Citizens Ins Co v Scholz*, 268 Mich App 659, 662; 709 NW2d 164 (2005).

¹ The limitations period for ordinary negligence claims is three years. MCL 600.5805(10). The limitations period for assault, false arrest, and false imprisonment is two years. MCL 600.5805(2).

Plaintiffs pleaded negligence and intentional tort claims. The limitation period for negligence claims is three years. MCL 600.5805(10). The limitations period for assault, false arrest, and false imprisonment is two years. MCL 600.5805(2). The statute of limitations begins to run when a claim accrues. MCL 600.5805(1); see *Stephens v Dixon*, 449 Mich 531, 538; 536 NW2d 755 (1995). Here, plaintiffs' claims accrued at the time they were arrested by Motor City security personnel in May, July, August, and September 2000.

Plaintiffs argue that the statute of limitations was tolled under MCR 3.501(F)(1) when other casino patrons filed similar lawsuits and sought class certification because plaintiffs were members of the putative classes in those cases. Under MCR 3.501(F)(1), "[t]he statute of limitations is tolled as to all persons within the class described in the complaint on the commencement of an action asserting a class action." MCR 3.501(F)(1). Assuming that plaintiffs were members of the putative classes in the other cases, tolling began when those cases were commenced. *Id.* The first such action for which there is evidence in the lower court record was Steven Stolman's action, which was commenced on December 20, 2001.² Thus, tolling began on December 20, 2001. About 15 months, at the least, had elapsed between accrual in September 2000 and the date tolling began.

The central issue in this case is when tolling ceased. MCR 3.501(F)(2) governs when tolling ceases, and provides:

The statute of limitations resumes running against class members other than representative parties and intervenors:

(a) on the filing of a notice of the plaintiff's failure to move for class certification under subrule (B)(2);

(b) 28 days after notice has been made under subrule (C)(1) of the entry, amendment, or revocation of an order of certification eliminating the person from the class;

(c) *on entry of an order denying certification* of the action as a class action;

(d) on submission of an election to be excluded;

(e) *on final disposition* of the action. [Emphasis added.]

Plaintiffs contend that under MCR 3.501(F)(2)(e), the statute of limitations was tolled until there was a final disposition of the action, which could only be made by our Supreme Court and which did not occur in this case. The trial court rejected this argument, holding that tolling

² Another casino patron appears to have filed a similar complaint on August 16, 2000, but that complaint is not a part of the lower court record.

ceased, at the latest, on August 31, 2004 pursuant to MCR 3.501(F)(2)(c), when this Court overturned the trial court's decisions granting class certification in two cases brought by other Motor City patrons. *Stiglmaier, supra* (Borrello, J., *dissenting*).

Resolution of this issue requires us to construe MCR 3.501(F)(2). Court rules are interpreted like statutes. *Kloian*, 273 Mich App at 458. "A statute must be read in its entirety and the meaning given to one section arrived at after due consideration of other sections so as to produce, if possible, an harmonious and consistent enactment as a whole." *State Treasurer v Wilson*, 423 Mich 138, 145; 377 NW2d 703 (1985). "As far as possible, the court gives effect to every phrase, clause, and word in the statute." *Driver v Naini*, 287 Mich App 339, 349; 788 NW2d 848 (2010). Furthermore, "[i]n construing a statute, we will make every effort to . . . avoid rendering any part nugatory." *State Bar of Mich v Galloway*, 422 Mich 188, 196; 369 NW2d 839 (1985).

MCR 3.501(F)(2) delineates five alternative circumstances that will end a period of tolling and cause a statute of limitations to resume running. The plain language of the court rule does not establish a priority in terms of the different circumstances that will resume the running of a statute of limitations and does not require all or a combination of the alternatives to occur before a statute of limitations will resume running. Rather, under the plain language of the statute, if any one of the alternatives in MCR 3.501(F)(2) occurs, the statute of limitations resumes running. Plaintiffs' argument would render MCR 3.501(F)(2)(e) as being the dominant part of the subrule and would render nugatory MCR 3.501(F)(2)(c), which plainly provides for tolling to cease "on entry of an order denying certification" As noted above, we must give effect to every phrase in a court rule and avoid any construction that would render nugatory any part of a court rule. Furthermore, we must construe a court rule in a manner that harmonizes its provisions. See *People v Hill*, 269 Mich App 505, 515; 715 NW2d 301 (2006).

MCR 3.501(F)(2) could have been written in such a manner as to give dominance or priority to certain circumstances in terms of the resumption of a statute of limitations following a tolling period, but it was not. We may read nothing into a court rule that is not within the intent of the court rule as derived from the words of the court rule itself. See *id.* Furthermore, it is not the function of this Court to rewrite court rules. As written, MCR 3.501(F)(2)(c) provides for the resumption of the running of a statute of limitations "on entry of an order denying certification" and, in this case, such an order was entered.

At the latest, the tolling of the statute of limitations ceased when this Court issued its August 31, 2004, ruling reversing the trial court's decisions granting class certification in two cases brought by other Motor City patrons. MCR 3.501(F)(2)(c). Thereafter, the limitations period resumed running. As stated previously, the limitations period had run for approximately 15 months before tolling commenced. Therefore, at the time it resumed running, there remained only about nine months in the limitations period for the intentional tort claims, and about 21 months left in the limitations period for the negligence claim. MCL 600.5805(2), (10). The limitations period for the intentional tort claims expired in or around May 2005, and the limitations period for the negligence claim expired in or around May 2006. Plaintiffs' action, commenced in January 2008, is therefore time-barred. MCL 600.5805(2), (10).

Because plaintiffs' action is untimely, their remaining issues on appeal, all relating to the tolling issue, are moot. This Court need not address issues that have become moot. *Ardt v Titan Ins Co*, 233 Mich App 685, 693; 593 NW2d 215 (1999).

Affirmed.

/s/ Stephen L. Borrello

/s/ Kathleen Jansen

/s/ Henry William Saad